



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

June 26, 1998

Honorable Mike Moncrief
Chairman
The Senate Interim Committee on Home
Health and Assisted Living Facilities
Texas State Senate
P.O. Box 12068
Austin, Texas 78711

OR98-1542

Dear Senator Moncrief:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 116331.

The Senate Interim Committee on Home Health and Assisted Living Facilities (the "committee") received an open records request for any reports regarding investigations of the Tangram Rehabilitation Network. You state that the committee had previously obtained from the Texas Department of Human Services a "Report of Contact" and an "Investigation Report" that is responsive to the request.¹ You contend these two documents are excepted from required public disclosure pursuant to, *inter alia*, section 552.108 of the Government Code because

based on the findings of the Report, DHS referred the case to the District Attorney for the 25th Judicial District of Texas. This referral resulted in two indictments against ex-employees of Tangram on April 3, 1998.

Section 552.108(a)(1) of the Government Code, as amended by the Seventy-fifth Legislature, excepts from required public disclosure "[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if . . . release of the information would interfere with the detection, investigation, or prosecution of crime." You inform us that "[a]ccording to the Guadalupe County district attorney, release of the Report to the public could seriously compromise the prosecution and investigations involving the ex-employees of Tangram." We infer from this statement that the district attorney desires that these records not be released to the public at

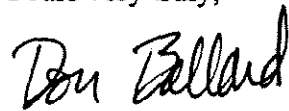
¹We note that the committee has a special right of access to these materials when requested for "legislative purposes." See Gov't Code § 552.008(a).

this time. Because you have informed us that the records at issue pertain to pending criminal prosecutions, we conclude that you have met your burden of establishing that the release of the requested information at this time could interfere with law enforcement or prosecution. See Open Records Decision Nos. 474 (1987), 372 (1983) (statutory predecessor to section 552.108 may be invoked by any proper custodian of information which relates to pending criminal investigation or prosecution). The committee therefore may withhold most of the requested information at this time pursuant to section 552.108(a)(1).²

Section 552.108 does not, however, except from required public disclosure "basic information about an arrested person, an arrest, or a crime." Gov't Code § 552.108(c). Generally, these types of information must be released to the public in accordance with *Houston Chronicle Publishing Company v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.--Houston [14th Dist.] 1975), writ ref'd n.r.e. per curiam, 536 S.W.2d 559 (Tex. 1976). We note, however, that the victims of these particular offenses are head trauma patients or are otherwise mentally disabled. As such, the victims' names must be withheld from public disclosure pursuant to the common-law right of privacy as incorporated into section 552.101 of the Government Code. See *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668, 683-85 (Tex. 1976), cert. denied, 430 U.S. 931 (1977) (common-law privacy protects information that is both highly intimate or embarrassing, such that its release would be highly objectionable to a reasonable person, and of no legitimate concern to the public). The committee must release, however, the remaining "basic information" to the requestor.³

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Don Ballard
Assistant Attorney General
Open Records Division

JDB/RWP/ch

²Because we resolve your request under section 552.108, we need not address your other arguments for non-disclosure except for section 552.101 of the Government Code. See discussion *infra*.

³The remaining basic information does not come within any of the other exceptions to required public disclosure that you raised. For your convenience, we have attached a summary of Open Records Decision No. 127 (1976), which outlines in accordance with *Houston Chronicle* the categories of information that normally must be released to the public.

Ref.: ID# 116331

Enclosures: Submitted documents
Summary of ORD 127

cc: Mr. Andrew Prough
Deputy Director
Citizens Commission on Human Rights
711 West Seventh Street, Suite 110
Austin, Texas 78701
(w/Summary of ORD 127)